IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.24556 OF 2002

Salem Textiles Limited,
Selliampalayam,
Narasingapuram 636 108,
Attur Taluk, Salem District. .. Petitioner

-Vs-

1. The Superintendent of Central
Excise, Attur Forward Sector,
Attur 636 102.

2. The Deputy Commissioner of
Central Excise,
Salem Division,
Anai Medu, Salem 636 001. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to quash the proceedings of the first respondent in O.C.No.334/2002 dated 11.6.2002 as illegal and without jurisdiction.

For Petitioner : Mr.N. Prasad for
Mr.N. Inbarajan

For Respondents 1-2 : Mr.K. Veeraraghavan, SCGSC

:J U D G M E N T

The present writ petition has been filed for quashing the order dated 11.6.2002 in O.C.No.334 of 2002. The petitioner, a company registered under the Companies Act is running a Textile Mill and engaged in the manufacture of cotton yarn, viscose yarn and flex cotton yarn. The petitioner purchased viscose fibre on which Excise duty is payable. The petitioner also purchased several other materials which are subject to CENVAT. It is claimed that the petitioner Unit became a Sick Industrial Company and the matter has been referred to the Board for Industrial and Financial Reconstruction, hereinafter referred to as BIFR. While the matter stood thus, on 13.7.2001, an ex-parte

order was passed by the second respondent under Rule 8(4)(ii) of the Central Excise Rules. Under the said order it was indicated that the petitioner had defaulted thrice in discharging the duty liability. It was also indicated that facility of payment of Excise duty in instalments stood forfeited for a period of two months from the date of communication of the said order and the petitioner was directed to pay Excise duty for each consignment by debiting the duty amount in his Account Credit (PLA). It was further indicated . . . And in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow. On receipt of the said order, the petitioner had written to the second respondent by letter dated 20.7.2001 that the Unit had become a sick unit and had been referred to BIFR and a case has been registered as Case No.168/2001. Subsequently, under the impugned communication dated 11.6.2002, the petitioner was informed that the petitioner had utilised CENVAT Credit from 1.7.2001 to 31.5.2002 to an extent of

Rs.92,46,670/- in gross negligence of the forfeiture order dated 9.7.2001. The petitioner was called upon to pay CENVAT availed duty of Rs.92,46,670/- with interest thereon.

2. The aforesaid order is being impugned mainly on the ground that since the matter is pending before the BIFR, the respondents should not take any coercive steps except in accordance with the provisions contained in the Sick Industrial Companies (Special Provisions) Act, 19 85. It is also contended that the impugned order is passed without following the principles of natural justice. Learned counsel for the petitioner has further contended that there is no irregularity in the petitioner discharging its liability by making necessary adjustment under CENVAT Credit as contemplated under Rule 3(3) of the CENVAT Credit Rules, 2002.

3. A counter affidavit has been filed on behalf of the respondents refuting the contentions raised by the petitioner. In the said counter affidavit it has been indicated that the Rules do not laid down any procedure for invoking Rule 8(4) of Central Excise Rules and the principles of natural justice are not required to be followed in the absence of any specific provisions.

4. The provisions contained in Rule 8 of the Central Excise Rules, 2 002 are similar to Rule 49(1) read with Rule 173G of the Central Excise Rules, 1944. While considering the latter provisions, a Division Bench of Punjab & Haryana High Court in the decision reported in 2001 (134) ELT 14 (KRISHNA ENGINEERING WORKS LTD. v. UNION OF INDIA) held as follows :-

 18. The argument of Shri Gumber that the object sought to be achieved by amending the Rules will be defeated if the rules of natural justice are read as a part thereof sounds attractive, but does not merit acceptance. A careful reading of the Rules in their totality shows that the main purpose of the amendments is to extend the facility of making payment of the duty on fortnightly basis instead of daily basis. The provision for forfeiture of the facility is intended to ensure rigorous compliance of the time schedule specified in the amended Rules. However, there is nothing in the scheme of the Rules which may justify the invoking of the theory of

implied exclusion of the rule of hearing and in any case, the object of the amendments will not be defeated by insisting on compliance of the rule of audi alteram partem before issuing an order of forfeiture within the meaning of Rule 4 9(1)(e) or Rule 173G(1)(e) because the order which may be passed by the competent authority after hearing the affected party will operate for next two months. In addition, the defaulter will have to pay interest at the rate of 24% per annum on the delayed payment of the duty.

5. For coming to the aforesaid conclusion, the High Court relied upon several decisions of the Supreme Court including the decisions reported in AIR 1973 SC 239 (SAYEEDUR REHMAN v. THE STATE OF BIHAR AND OTHERS), AIR 1978 SC 597 (MANEKA GANDHI v. UNION OF INDIA), AIR 1978 SC 851 (MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER), AIR 1981 SC 136 (S.L. KAPOOR v. JAGMOHAN) and AIR 1981 SC 818 (SWADESHI COTTON MILLS v. UNION OF INDIA).

6. The ratio of the aforesaid decisions, which were applied by the Punjab and Haryana High Court, are clearly applicable to the present case. Even though under the Central Excise Rules there is no specific provision regarding the procedures to be followed, it cannot be said that the Rules necessarily exclude the applicability of the principles of natural justice. Law is now well settled that in the absence of any provision excluding the applicability of principles of natural justice either expressly or by necessary implication, the rules of natural justice have to be read into the provisions. I am in respectful agreement with the ratio of the decision of the Punjab and Haryana High Court which while considering a similar provision has held that the rules of natural justice has to be followed.

7. In the present case, there is no dispute that while passing the impugned order, principles of natural justice had not been followed. On this ground alone, the impugned order is liable to be quashed.

8. The respondents should now afford opportunity to the petitioner to show cause and thereafter, the matter is to be decided afresh by the respondents in accordance with law after giving opportunity of hearing to the present petitioner. In this view of the matter, it is not necessary to consider the other contentions raised by the petitioner or by the respondents as it would be open to both the parties to raise all such contentions before the appropriate authority.

9. Accordingly, the writ petition is allowed and the impugned order is quashed and the second respondent is directed to reconsider the matter in accordance with law after giving opportunity of hearing to the petitioner. No costs.

Index : Yes
Internet : Yes
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To

1. The Superintendent of Central
Excise, Attur Forward Sector,
Attur 636 102.

2. The Deputy Commissioner of
Central Excise,
Salem Division, Anai Medu, Salem 636 001.